

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
APPENDIX**



# 74-1094

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA  
ex rel. CORNELIUS LUCAS,

Petitioner-Appellant,

-against-

PAUL J. REGAN, Chairman,  
New York State Division  
of Parole,

Respondent-Appellee.

Docket No. 74-1094

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APPENDIX TO PETITIONER-APPELLANT'S BRIEF

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ON APPEAL FROM AN ORDER OF  
THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



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593

## HABEAS

CORRECTION

RECEIVED

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## DOCKET

**TITLE OF CASE**

UNITED STATES OF AMERICA

ex rel. CORNELIUS LUCAS

vs.

PAUL J. REGAN, Chairman,

New York State Division of Parole

**ATTORNEYS**

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**For Defendant:**

**BASIS OF ACTION:**

(Related Case: 71-C-1217)

## JURY TRIAL CLAIMED

ON

[illegible]

### ABSTRACT OF COSTS

[illegible]



DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-1-73	PETITION FILED FOR A WRIT OF HABEAS CORPUS.	1
5-1-73	BY COSTANTINO, J. ORDER TO SHOW CAUSE FILED why a writ of habeas corpus should not be granted, etc. (returnable May 8, 1973 in Court Room #1 at 10:00 A.M.) BY COSTANTINO, J. (See memo endorsed upon the order to show cause (page 2) granting leave to proceed in FORMA PAUPERIS)	2
5-1-73	Petitioner's Memorandum of law filed.	3
5-1-73	Copy of order to show cause filed with proof of service, etc.	4
5-1-73	Copy of Petitioner's memorandum of Law filed with proof of service, etc.	5
5-8-73	Before COSTANTINO, J. Case called. MOTION ADJOURNED (for writ) to May 22, 1973 at 10:00 A.M.	
5-22-73	Before COSTANTINO, J. Case called and Motion adjourned to May 29, 1973 at 10:00 A. M.	
5-5-73	Before COSTANTINO, J. Hearing on order to show cause, etc. ARGUED - DECISION RESERVED.	
8-27-73	RESPONDENT'S MEMORANDUM OF LAW FILED.	6
11-9-73	BY COSTANTINO, J. MEMORANDUM and ORDER FILED. THE PETITION for a writ of HABEAS CORPUS is DENIED. (See Memo., etc.)	7
2-4-73	NOTICE OF APPEAL FILED.	8
2-4-73	Copy of Notice of Appeal was on this day mailed to Clerk, U.S.C.A.	
2-4-73	Copy of Notice of Appeal was on this day mailed to HON. LOUIS J. LEEKOWITZ, Atty., Gen., State of N.Y., 2 World Trade Centre, N.Y., N.Y. ATT: ARLENE R. SILVERMAN, ESQ.	
12-4-73	Instructions on preparation of record on appeal were on this day handed personally to a representative of the Legal Aid, etc.	
1-14-74	Letter dated 12-14-73 to Hon. Mark A. Costantino re certificate of probable cause filed.	
1-14-74	By COSTANTINO, J. Certificate of probable caused filed & mailed.	10

A TRUE COPY  
ATTEST  
DATED Jan. 17, 1974  
LEWIS ORGEL  
BY *James R. Brantley*  
DEPUTY CLERK

240 108-1  
NOV 12, 1973

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA ex rel.  
CORNELIUS LUCAS

73-C-593

v.

PAUL J. REGAN, Chairman, New York  
State Division of Parole

:  
MEMORANDUM and  
ORDER

NOV 9 1973

-----X  
A p p e a r a n c e s :

Robert A. Kasanof, Esq., The Legal Aid Society, by Lewis B.  
Oliver, Jr., Esq., 119 Fifth Avenue, New York City 10003,  
for petitioner

Hon. Louis J. Lefkowitz, Attorney General of the State of  
New York, by Arlene R. Silverman, Esq., Ass't Attorney  
General, 80 Centre Street, New York, New York

COSTANTINO, D.J.,

On May 1, 1973 Lucas submitted a petition for a writ of habeas corpus to this court asserting that the state conviction for which he is presently on parole was unlawful and unconstitutional. He was convicted on May 25, 1965 in Supreme Court, Kings County, of robbery in the first degree, grand larceny in the first degree, and assault in the second degree after a jury trial. He had been tried with Edward Polhill who was also convicted. The principal witnesses against them were the third robber, Norman Adderly and Mrs.

Almeta Gardner, the complainant. Lucas was sentenced on September 7, 1965 to concurrent sentences of ten to twenty years, five to ten years and two to two and one-half years. Coram nobis relief was denied by an order of the Supreme Court, Kings County entered October 15, 1968. The Appellate Division, Second Department, affirmed the consolidated direct appeal and coram nobis appeal on January 19, 1970 (no opinion), 33 A.D.2d 994, 308 N.Y.S.2d 299 (1970). The Court of Appeals affirmed, 28 N.Y.2d 761, 321 N.Y.S.2d 371 (1971) (Breitel, J., dissenting) and denied a motion for reargument, 29 N.Y.2d 549, 324 N.Y.S.2d 95 (1971). Certiorari was denied in the United States Supreme Court, 404 U.S. 994 (1971) (Douglas, J., dissenting). After a hearing held on June 5, 1973 the court reserved decision.

The specific grounds for seeking the writ are as follows:

1. The trial judge denied a continuance sought by the defense (A) to enable it to secure attendance of a witness the defense considered crucial and (B) to secure compliance with a subpoena for psychiatric records of an important witness against Lucas, thereby depriving petitioner



of due process..

2. A station house "show up" of petitioner, conducted after the complainant had previously identified another person as a perpetrator from a full line-up, deprived petitioner of due process.

3. The trial court and the prosecutor both failed to correct false testimony given by the accomplice as to the terms of his agreement to turn state's evidence, thereby depriving petitioner of due process.

I. The Request for a Continuance.

A. To secure attendance of a material witness.

On the last day of the trial, May 25, 1965, defendant requested a continuance so that a man first identified by the complainant as the third of the three robbers, Ulysses Bryant, could be located and questioned as a witness. Bryant was identified as one of the robbers by Mrs. Almeta Gardner three days after she was robbed. Mrs. Gardner had been brought to a police station for a line-up in which she identified three men, Adderly, Polhill, and

*Constantine*

*not true*

Bryant, as the perpetrators. One hour later for reasons not disclosed in the record petitioner was arrested and was one of several men brought before her alone in a room. She identified Lucas at that time as the third and said she had been mistaken about Bryant. Bryant, who was Adderly's cousin, was arrested with Adderly and Polhill. He was clearly a material and relevant witness for petitioner to question for the jury to see and hear so that it could evaluate Mrs. Gardner's identifications.

Defense counsel first learned about Bryant on May 21, 1965, the second day of the trial, during the cross-examination of Mrs. Gardner. They immediately sent out an investigator to locate Bryant, but by May 25 they had not been able to find him and so moved for a continuance. Judge Harry Gittleston, the trial judge, in discussing the reasons for his denial of the motion for a continuance, pointed out that the defense had had four days to locate Bryant. In addition it was shown that Lucas had known Bryant for at least a year prior to the trial and so might have apprised his counsel of Bryant's importance to his defense.

The granting of a continuance during a trial is discretionary with the trial judge. Ungar v. Sarafite, 376 U.S. 575 (1964), reh. denied 377 U.S. 925 (1964). Only if the refusal is arbitrary is there a violation of due process. Nilva v. United States, 352 U.S. 385 (1957), reh. denied, 353 U.S. 931 (1957); United States ex rel. Hyde v. McMann, 263 F.2d 940 (2d Cir. 1959), cert. denied, 360 U.S. 937 (1959); United States ex rel. Hussey v. LaVallee, 302 F.Supp. 305, 309 (E.D.N.Y. 1969). Arbitrariness must be determined by viewing all the circumstances surrounding the trial judge's decision. Here Judge Gittleson was presiding over a jury trial which had been under way for five days. When considering the length of the trial, the fact that counsel had had four days to locate the witness, and the fact that petitioner himself knew of Bryant and his importance, it cannot be said that Judge Gittleson's denial of the continuance was arbitrary. Petitioner's first ground is therefore without foundation.

B. To Secure Psychiatric Records of an Important Witness.

On the first day of the trial defense counsel learned of Norman Adderly's psychiatric history and subpoenaed his

psychiatric records. The records had not been produced by the last day of the trial, May 25, 1965, and defense counsel requested a continuance until they could be produced. Judge Gittleson noted that defense counsel were merely speculating that the psychiatric records would be of value to the defendants and, more importantly, that they had had four days to secure compliance with the subpoena.

The coram nobis hearing, held in October, 1968, fully explored Adderly's competency as a witness and this court presumes to be correct the finding that no error in this regard was made, pursuant to 28 U.S.C. § 2254(d) (1971).

It should be noted that the defense had every opportunity to cross-examine Adderly as to his psychiatric records and mental condition. In addition, the records themselves were a year old at the time of the trial and would have been of limited utility. Defense counsel could have called expert witnesses to impeach Adderly's testimony had the defense desired to place his mental condition in issue, but they did not.

Accordingly, petitioner's second ground is without foundation.



## II The Station House Show Up.

Mrs. Gardner was asked to go to the station house three days after the robbery and view a line-up to ascertain whether she could identify her assailants. She immediately identified Adderly and Polhill and while she did identify Bryant as the third, she was not as certain as she had been about the first two. While she was being questioned by the Assistant District Attorney a series of men were brought before her individually and it was from this group that Mrs. Gardner picked out Lucas. Petitioner now contends the show up was improper and violated his due process rights in that the previous identification was more reliable and therefore petitioner should have been shown to her, if at all, in an equally neutral manner.

As the Supreme Court said in Neil v. Biggers, 409 U.S. 188 (1972):

[A]s Stovall [Stovall v. Denno, 388 U.S. 293 (1967)] makes clear, the admission of evidence of a showup without more does not violate due process....

....  
[T]he factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness'



degree of attention, the accuracy of the witness' prior description of the criminal, the level of the certainty demonstrated by the witness at the confrontation and the length of time between the crime and the confrontation. Neil v. Biggers, 409 U.S. 188, 198, 199 (1972).

Mrs. Gardner testified that she had not been sure of the first identification of the third robber and that when she was shown petitioner she recognized him as the correct man. There is no evidence of any suggestion to Mrs. Gardner that petitioner was the third robber. The identification took place only three days after the robbery and Mrs. Gardner testified that she had gotten a good look at all three robbers during the crime itself.

No hearing was required to determine the accuracy of the identification, United States v. Wade, 388 U.S. 218 (1967), because Wade has no retroactive requirement. Viewing all the circumstances, the identification of petitioner was not so suggestive so as to give rise to a "substantial likelihood of irreparable misidentification." United States ex rel. Phipps v. Follette, 428 F.2d 912, 915 (2d Cir. 1970). Accordingly, petitioner's third ground is denied.

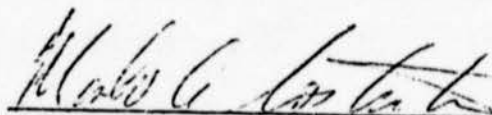
### III The Testimony about the Plea Bargain.

During the pretrial proceedings in this case Adderly was offered the bargain of a reduced charge - attempted robbery in the third degree - in return for his testimony as a prosecution witness. Petitioner asserts that Judge Gittleson told Adderly that he was to testify "against these defendants" and that therefore when Adderly testified before the jury that he was told only to "tell the truth" and this was not corrected by either the judge or the prosecutor, petitioner's rights were violated. He alleges that the jury may have gotten a distorted view of the bargain and that Adderly's motives for implicating petitioner may not have been fully understood by the jury. The record, however, indicates that the bargain was fully examined before the jury and the jury was aware of the inducements Adderly had been offered for his testimony. He said, "If I get on the stand and speak the truth, exactly what happened that night, they would allow me to plead guilty to attempt[ed] unarmed robbery in the third degree."

The test for determining whether there has been an abuse of discretion is whether "the jury was otherwise in

possession of sufficient information concerning formative events to make a 'discriminating appraisal' of a witness' motives and bias. See Gordon v. United States, [344 U.S. 414, 417 (1953)]." United States v. Campbell, 426 F.2d 547, 550 (2d Cir. 1970). The court finds that Adderly's motives for testifying were before the jury and that there was no undue bias in his asserting that he had been told to tell the truth.

All four of petitioner's grounds are baseless and accordingly, the petition for a writ of habeas corpus is denied.

  
U. S. D. J.

MEMORANDUM OPINION OF THE  
NEW YORK COURT OF APPEALS

Judgment and order affirmed; no opinion.

Concur: Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Jasen and Gibson. Judge Breitel dissents and votes to reverse and grant a new trial on the grounds that the cross-examination of the witness Adderly was improperly curtailed, and that it was an abuse of discretion to deny the defendant adjournments in order to obtain mental hospital records concerning the witness Adderly and to refuse to permit the calling of Ulysses Bryant as a witness, all of which rendered the trial unfair.

# State of New York,

IN COURT OF APPEALS

*At a Court of Appeals for the State of New  
York, held at Court of Appeals Hall in the  
City of Albany on the.....Tenth.....day  
of.....June.....A. D. 19 71.*

**Present,** HON. STANLEY H. FULD, Chief Judge, presiding.

---

Mo. No. 510  
The People &c., Respondent,  
vs.  
Cornelius Lucas, Appellant.

---

A motion for reargument of the above cause or, in the alternative, to amend the remittitur herein having heretofore been made upon the part of the appellant and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion, insofar as it seeks reargument, be and the same hereby is denied, and it is

ORDERED, that the said motion, insofar as it seeks amendment of the remittitur, be and the same hereby is granted. The return of the remittitur is requested and, when returned, it will be amended by adding thereto the following:



Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: (1) Whether the pre-trial identification procedures employed deprived appellant of due process under the Fourteenth Amendment of the Constitution of the United States; (2) Whether the interference by the trial judge and the District Attorney in the cross-examination of the accomplice-witness deprived appellant of a right to a fair trial under the Sixth and Fourteenth Amendments of the Constitution of the United States; and (3) Whether the trial court's denial of the appellant's request for adjournments in order to obtain mental hospital records concerning the accomplice-witness and to permit the calling of a witness by the appellant, deprived appellant of a right to a fair trial under the Sixth and Fourteenth Amendments of the Constitution of the United States. The Court of Appeals considered these contentions and held that there was no violation of appellant's constitutional rights.

AND the Supreme Court, Kings County, hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

A copy

*[Signature]*  
Clerk

EXTRACT FROM THE TRIAL TRANSCRIPT  
CONTAINING CROSS-EXAMINATION OF  
MRS. GARDNER USING THE TRANSCRIPT OF  
HER ORIGINAL IDENTIFICATION OF ULYSSES BRYANT

EXTRACT FROM THE MINUTES OF THE PRE-TRIAL  
PROCEEDING OF MAY 19, 1965, CONCERNING THE  
CONDITIONS FOR ADDERLY TO RECEIVE THE LESSER  
PLEA.

THE COURT: Did anybody make any promises to you other than the fact that if you tell the truth and testify against these defendants and if what you say will conform with what you just told the Court -- in substance, not in those words -- you will then get the consideration of having your plea reduced to attempt robbery in the third degree; was that promise made to you?  
[ADDERLY]: Yes, sir.

THE COURT: Was that made to you by the District Attorney through your lawyer?  
[ADDERLY]: Right, sir.

THE COURT: Is that true, Mr. Brownstein?

DISTRICT ATTORNEY: That's true. If your Honor will just permit me to add a few things?

THE COURT: Yes. I want to know exactly what happened.

DISTRICT ATTORNEY: Yes. I want everything forthright and open.

The record, of course, shows that Mr. Segal is in court here, listening to this revelation by his client.

The record shows that Mr. Hanft is in court, representing Mr. Polhill; and Mr. O'Connor is in court, --

THE COURT: All the defendants are present in court.

MR. BROWNSTEIN: Yes; -- representing Mr. Lucas. The District Attorney has consulted with Mr. Segal, the attorney of record now of this defendant Adderley, and as a result of my conversation with Mr. Segal, we both in a forthright manner tried to come down to the justice of this case and to the truth of this case; and I had an understanding with Mr. Segal that if this defendant, Adderley, will tell the truth on the trial of this case, substantially as this record has it -- and I am, Mr. Stenographer, now ordering this record --

THE COURT: Are you satisfied that all the facts have been developed?

MR. BROWNSTEIN: Yes, your Honor; substantially all the facts, missing a few details, that are not important at this point. If he does that, then there is a cleancut, forthright promise given to you in open court that the District Attorney will consent to the vacating of this plea taken now, of robbery in the first degree, and will be amenable to your offering to plead guilty to attempted robbery in the third degree, to cover all counts, as well as the other indictment.

THE COURT: Is that your understanding, sir? [ADDERLY]: Yes, sir.

THE COURT: Now, did anybody make any promises to you with respect to the jail term that will be imposed here? [ADDERLY]: No, sir.

THE COURT: Mr. Segal, was any representation made by you that you received from the District Attorney with respect to any jail term that would be imposed?

ADDERLY'S COUNSEL: There was none offered and none spoken and none talked about and no discussion other than I was hopeful that certain consideration would be given.

THE COURT: Thank you very much. You just heard Mr. Segal respond to the Court's question. [ADDERLY]: Yes, sir.

THE COURT: Has anybody communicated to you any expression of opinion as to how long you would be sent to jail? [ADDERLY]: No, sir.

THE COURT: Do you understand that the Court is making no promises of any kind with respect to the jail term that will be imposed? [ADDERLY]: Yes, sir.

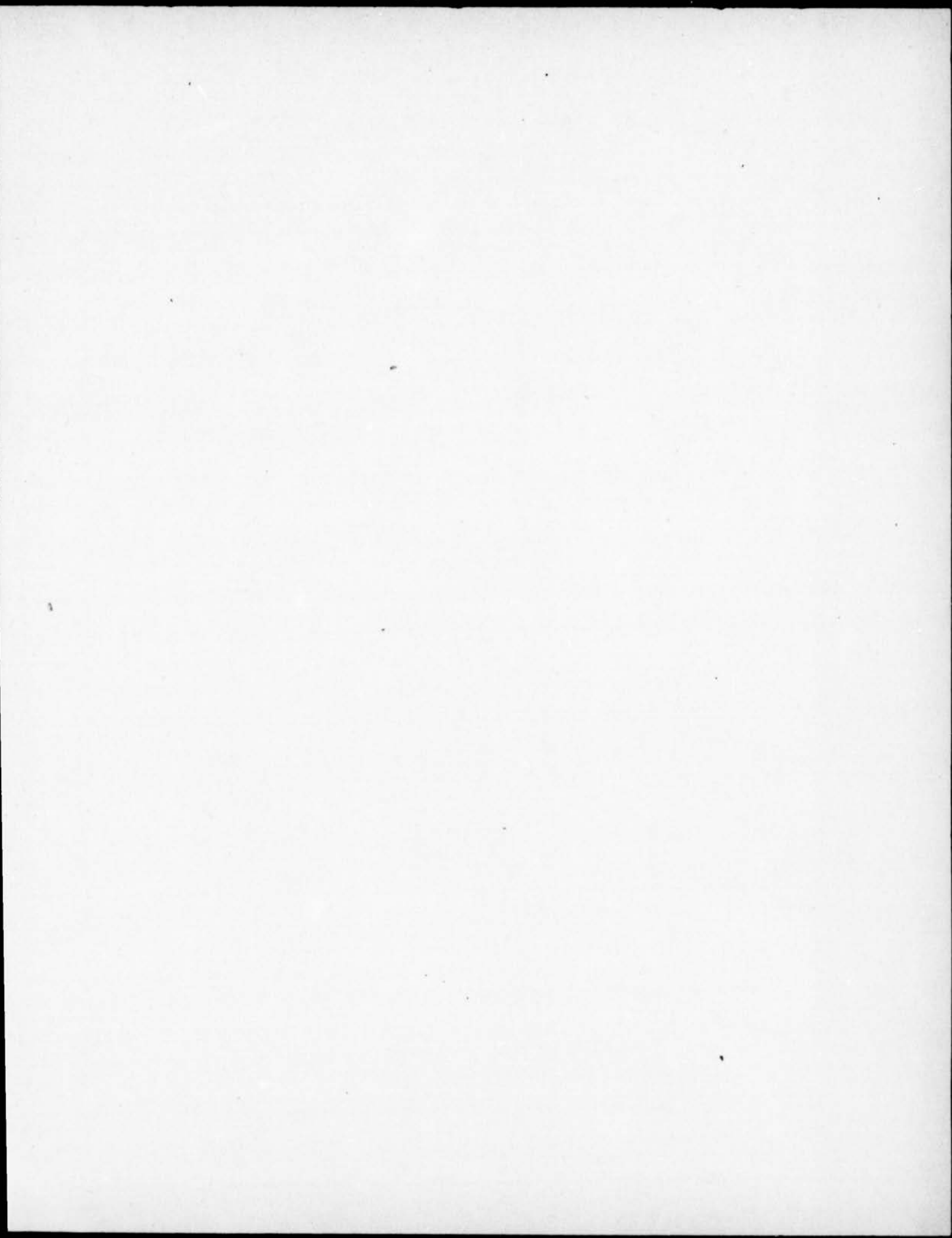
THE COURT: Now, are you fully aware, even at this moment, that you have a right to proceed to trial; and everything said this morning up to this point cannot be used against you? [ADDERLY]: Yes, I do.

THE COURT: Now, in view of that information, are you still voluntarily willing to offer the plea that has been offered in this case? [ADDERLY]: I do, sir.



THE COURT: You know, sir, if you don't repeat the truth, nothing else but the truth, from the witness stand -- and I assume that what you told me in response to the questions was the truth -- the plea of robbery in the first degree will stand? And do you understand, sir, there is absolutely no promise of any kind other than what has been communicated in open court? Do you still want to plead guilty as proposed?  
[ADDERLY]: Yes, sir.

(T 72-75)



EXTRACT FROM MINUTES OF TRIAL ON MAY  
20, 1965, CONTAINING THE CROSS-EXAMI-  
NATION OF ADDERLY AS TO THE CONDITIONS  
FOR RECEIVING THE LESSER PLEA.

Q Then there came a time when  
you were offered a reduced plea;  
is that correct? [ADDERLY]:  
Yes.

Q You know, don't you, that you  
were offered that reduced plea  
on the condition that you make  
the statement that you made here  
today?

THE COURT: That is not true.  
The Court participated in that.

MR. HANFT: May I ask him whether  
or not he understands that?

MR. BROWNSTEIN: I object to that.  
Just a moment, Mr. Witness.

MR. HANFT: Whether or not it is  
true --

MR. BROWNSTEIN: I object to that  
question and I respectfully ask  
the Court, sir, to direct the  
jury --

THE COURT: I am sure you don't  
intend it that way; but the  
interrogation was conducted by  
this Court, personally, in open  
court, in the presence of counsel.  
That's what you are talking about;  
the plea.

MR. HANFT: I am talking --

THE COURT: The Court conducted  
the --

MR. HANFT: I am talking, if your  
Honor pleases, about the preliminary  
statements that were made prior  
to the time when he came in to  
tell your Honor the story; and  
I object to your Honor's making  
the statement that what I said  
is not so.

THE COURT: Well, it is untrue  
if you are referring to the time  
he offered his plea in court.  
Of course it is untrue.

MR. HANFT: That is not what I  
am referring to, if your Honor  
pleases. I am referring to what  
went on prior to the time when  
he came into court.

THE COURT: You didn't indicate that in your question.

MR. HANFT: That's what I meant.

THE COURT: The Court is very sensitive of its position.

MR. HANFT: Your Honor knows that I didn't -- couldn't possibly have meant that.

THE COURT: All right. Are you talking about a prior occasion?

MR. HANFT: Yes.

THE COURT: Prior to the time he got into the courtroom?

MR. HANFT: Yes; prior to the time that he got into the courtroom.

BY MR. HANFT:



Q You were told, weren't you, that if you made certain statements implicating Polhill and Lucas, that you would be offered the reduced plea? A No. No, sir; I were not.

MR. BROWNSTEIN: May it please your Honor --

THE COURT: No, he did not, he said.

MR. BROWNSTEIN: I am not interested in that. May I at this point ask if Mr. Hanft was his attorney at that time? And if he was, I most respectfully object.

MR. HANFT: The answer is, no, I was not his attorney at that time, but I --

THE COURT: And, in addition to that, that's an objection that is to be offered only by the person affected and not by the Assistant D.A.

MR. BROWNSTEIN: I'll withdraw --

THE COURT: If he wants to hide behind any alleged confidential communication, he may assert that; but only if these conversations took place while he was represented by Mr. Hanft.

MR. BROWNSTEIN: In view of that,  
I withdraw the entire objection.  
Let it go.

BY MR. HANFT:

Q You had an attorney by the  
name of Segal at that time; is  
that correct? A Yes.

Q You had an attorney by the  
name of Segal; Sam Segal?  
A Yes.

Q And Mr. Segal discussed this  
with you; isn't that so?  
A Discussed what?

Q Discussed --

MR. BROWNSTEIN: I object, unless  
the witness is allowed to fully  
answer his question.

THE COURT: He said, "Discuss  
what?" He asked the examiner  
what he means. "Discuss what?",  
he wants to know.

Q Discuss the offer of your accepting a reduced plea and offering a reduced plea if you will testify implicating Lucas and Polhill? A No.

MR. BROWNSTEIN: I object to that question. A No, sir.

Q I want to know -- all right.

THE COURT: He answered.

Q Was that ever said to you by anybody? A No, sir; not implicating anyone.

BY THE COURT:

Q What was said to you? A What was said to me? If I get on the stand and speak the truth, exactly what happened that night, they would allow me to plead guilty to attempt unarmed robbery in the third degree, and I agreed to that. My counsel was here when I took that plea.

THE COURT: He is not talking about what took place in the courtroom. He is talking about what took place outside of the courtroom.

THE WITNESS: No, sir. Nothing was said like that.

BY MR. HANFT:

Q Wasn't something said to you before you came into the courtroom?

A No, sir.

Q You mean until you came into the courtroom you did not know that you were going to be asked to take the stand and testify? Is that true? A Until I came into the courtroom? When; today?

Q Yesterday. A Until I came into the court? That's why I engaged counsel; for his advice. Whatever he tell me to do, I will do.

Q And in your discussion with your counsel, did you discuss with him the question of your taking the stand to testify?

A Yes.

Q Before you came into court --

A Not to take the stand.

MR. BROWNSTEIN: I object.

A Not to take the stand.

MR. BROWNSTEIN: I object to the witness not being allowed to finish his answer.

THE COURT: He answered, "Yes".

MR. BROWNSTEIN: He wanted to say more, I think.

THE COURT: Did you finish your answer?

THE WITNESS: No, sir.

THE COURT: Finish it, please.

MR. BROWNSTEIN: Thank you.

MR. HANFT: I have no objection.

THE WITNESS: Will you repeat it?

THE COURT: Please read the question.

MR. BROWNSTEIN: I respectfully ask the Court to instruct the jury that evidence is not in the question but in an answer.

THE COURT: I have already given them that instruction.

MR. BROWNSTEIN: Thank you, sir.

THE COURT: Not in that language, but given them that instruction.



MR. BROWNSTEIN: Thank you.

(Read back by the reporter.)

BY MR. HANFT:

Q Now, you did discuss with your counsel, didn't you, the question of your testifying here in court? A On his advice to plead guilty, yes.

Q And you knew that at the time you offered to plead guilty, that you would have to take the stand to testify? A That's right.

Q You knew that you were going to receive a plea to attempted robbery in the third degree if you testified, implicating Polhill and Lucas?

MR. BROWNSTEIN: I object to the last three words of the question.

THE COURT: Overruled.

Q Did you know that? A You say "implicating Polhill and Lucas". That I would take the stand and testify to tell the truth when they were there, yes. They were in this crime with me the way it was committed.

Q You would testify that you and they were in this robbery; is that correct? A Right; correct.

Q And you knew you would have to do that? A Right.

Q And that's why you are getting the attempted robbery in the third degree; is that correct? A Right.

Q That was the consideration for it, wasn't it? A I think so.

BY THE COURT:

Q Tell us what you mean when you say that you would have to take the stand and testify that they were there, these two defendants. What do you mean by that? A I didn't say it in those words, your Honor. I said, "Take the stand and tell the truth"; the whole truth, regardless of who it hurt; and if they were there, if they -- if they was there, say they were there, and if they weren't there say they weren't there.

Q Did you understand that if you did not say that they were there, that you would not receive the courtesy that was promised to you; that is, take a plea to reduced degree of the crime?

A Yes; I understood that.

Q You understood that? A Yes.

Q In other words, you had to implicate them, whether it was true or false? A If it was false, I wouldn't take the stand, your Honor.

Q You are not answering me, sir. I want to know whether or not it was your understanding that in order to earn the consideration that was offered to you, that you would have to say that these two men were implicated in this robbery with you. A In order to get consideration? No, sir.

Q Well, what were you to do for the consideration?

MR. HANFT: May I have that answer?

THE COURT: "No, sir", he said.

Q What were you to do to gain the consideration that was offered to you? A To tell the truth what happened.

Q You mean whether the truth implicated or exculpated these defendants, were you going to include them, if they were exculpated and had nothing to do with this? A No, sir, I was not, sir. I was not.

Q Was that any part of your understanding? A No, sir.

Q That you were to include them, if they were not there? A No, sir; definitely not.

MR. HANFT: May I, Judge?

THE COURT: Yes.

BY MR. HANFT:

Q Mr. Adderley, you know very well, don't you, that if you did not include them in your statement here in the testimony, that you would not be offered the plea to attempted robbery in the third degree?

MR. BROWNSTEIN: I object.

Q You know that, don't you?

A No, sir.

THE COURT: Let him answer.

Q All right. Answer. A No, sir.

Q You didn't know that? A No, sir.

(T 158-166)

\* \* \* \* \*



[MR. O'CONNOR]: When you entered into this deal with the District Attorney's office, you were promised certain considerations if you testified; isn't that correct, sir?

[ADDERLY]: If I told the truth, yes.

Q Do you remember being told that when and if you do testify and told the truth, as you say, the District Attorney then would recommend that you be allowed to withdraw your plea to robbery in the first degree and allow you to replead to the crime of attempt robbery in the third degree? A I recall that; yes.

Q Do you recall the words being asked, "when and if"?

THE COURT: By whom?

Q By the District Attorney, Mr. Brownstein? A When and if?

Q -- you do testify --

MR. BROWNSTEIN: I object to him not allowing the witness to finish his answer.

THE COURT: He clarified the question. He said "when and if", rhetorically, and he clarified the question. A When and if I am -- if I ever take the stand and I speak the truth; not necessarily I must take the stand. Does that clarify it?

Q But if you did not take the stand, sir, were you made to understand that you would still get the reduced plea of attempt robbery in the third degree?

A No.

Q So the plea was conditioned on the basis that you take the witness stand. A And speak the truth as to what happened on April 23rd.

Q And it was only after you had taken the witness stand and after you had told something on the witness stand, would you be allowed -- A I told what --

Q Whatever you are telling now.

A You say, I was told.

Q The plea was conditioned upon the basis that you get on the witness stand, correct, and tell your story? A Yes.

THE COURT: Was it to tell your story?

THE WITNESS: To tell the truth; to speak the truth what happened on that alleged night, April 23rd.

Q And it was only after you did this, after this is over, actually, will you be allowed a reduced plea; correct?

A Something to that effect.

(T 202-203)

Adderley - cross

MR. BROWNSTEIN: I object to that unless May 19th follows in the year.

MR. O'CONNOR: May 19, 1965.

THE COURT: So there shan't be any question about it, the records of this court disclose that he never made an offer to plead guilty before yesterday.

MR. BROWNSTEIN: May the District Attorney so concede it, sr.

Q Now, sir, if you were found guilty, would you be a second felony offender?

MR. BROWNSTEIN: Objection -- objection withdrawn. Answer it.

THE COURT: It would be overruled if it were not. The answer is, yes, if he were found guilty.

Q And as a second felony offender, isn't it a fact that you could go away for 60 years?

MR. BROWNSTEIN: Objection -- objection withdrawn. Objection withdrawn; I'm sorry.

THE COURT: Frankly, I don't know either.

A I don't know. The Judge has jurisdiction over that. I wouldn't say.

Q You took a plea to robbery in the first degree, sir; is that correct? A Yes.

Q Isn't it a fact that robbery in the first degree

Adderley - cross

carries with it a sentence of 10 to 30 years? A That I don't know.

MR. BROWNSTEIN: I object.

Q By law?

THE COURT: Wait a minute, please. He says he doesn't know.

MR. BROWNSTEIN: Anyhow I want the objection for the record, but I'll withdraw the objection.

THE COURT: If you want a ruling on it, the objection would be overruled.

MR. BROWNSTEIN: All right.

Q And isn't it a fact, sir, that you had a conversation with your attorney, Mr. Segal, concerning the possibility of what would happen to you if you went to trial or if you took a plea? Isn't that so?

THE COURT: Do you understand the question?

A That's true; yes.

Q Mr. Segal told you what the sentence was; isn't that a fact? A No; I don't recall that.

Q Well, you do recall, sir, that as a second offender you faced different and additional punishment?

MR. BROWNSTEIN: I object to this argumentation with the witness on the ground -- I object to it.

MR. O'CONNOR: I'll rephrase the question.

THE COURT: Overruled.



Adderley - cross

Q Please answer the question? A Phrase it again, please?  
(Read back by the reporter.)

A Yes; I understand that.

Q And if your lawyer told you that if you were found guilty of robbery in the first degree, the possible scope of sentence would be a minimum of ten years and a maximum of thirty years as a first felony offender; would that be correct, sir?

THE COURT: That's "if". You say, if he told you.

Q If he told you?

THE COURT: Sustained.

MR. BROWNSTEIN: I object to that; "iffy".

Q Withdrawn. Did your lawyer tell you that as a first felony offender you faced a --

THE COURT: You are talking about the range of sentence?

Q Yes; range; between 10 years as a minimum and no more than 30 years as a maximum? Did your lawyer tell you that, sir? A Yes; in those terms.

Q And did he also tell you, sir, that as a second felony offender, the range of the sentence would be a minimum of no less than 15 years and a maximum of no more than 60 years? A Something to that effect.

THE COURT: Did he say it or didn't he say it?

THE WITNESS: Yes, sir.

Q How old are you at this time, sir? A 43.



Adderley - cross

Q When you entered into this deal with the District Attorney's office, you were promised certain considerations if you testified; isn't that correct, sir?

A If I told the truth, yes.

Q Do you remember being told that when and if you do testify and told the truth, as you say, the District Attorney then would recommend that you be allowed to withdraw your plea to robbery in the first degree and allow you to replead to the crime of attempt robbery in the third degree? A I recall that; yes.

Q Do you recall the words being asked, "when and if"?

THE COURT: By whom?

Q By the District Attorney, Mr. Brownstein? A When and if?

Q -- you do testify --

MR. BROWNSTEIN: I object to him not allowing the witness to finish his answer.

THE COURT: He clarified the question. He said "when and if", rhetorically, and he clarified the question. A When and if I am -- if I ever take the stand and I speak the truth; not necessarily I must take the stand. Does that clarify it?

Q But if you did not take the stand, sir, were you made to understand that you would still get the reduced plea of attempt robbery in the third degree? A No.

Adderley - cross

Q So the plea was conditioned on the basis that you take the witness stand. A And speak the truth as to what happened on April 23rd.

Q And it was only after you had taken the witness stand and after you had told something on the witness stand, would you be allowed -- A I told what --

Q Whatever you are telling now. A You say, I was told.

Q The plea was conditioned upon the basis that you get on the witness stand, correct, and tell you story?

A Yes.

THE COURT: Was it to tell you story?

THE WITNESS: To tell the truth; to speak the truth what happened on that alleged night, April 23rd.

Q And it was only after you did this, after this is over, actually, will you be allowed a reduced please; correct? A Something to that effect.

Q Now, you did plead guilty to robbery in the first degree, didn't you? A Yes.

THE COURT: We have already had that.

Q And you plead guilty because you are guilty?

A That's right.

Q And you realize, sir, do you not, that if the defendant Cornelius Lucas and the defendant Edward Polhill

## Adderley - cross/redirect

are acquitted, you will still be guilty of robbery in the first degree? Isn't that true, sir? A All right. That's it.

MR. BROWNSTEIN: Objection.

THE COURT: He has answered it.

MR. BROWNSTEIN: I didn't hear what he said.

THE COURT: He said, that is right. He is still guilty, whether they're acquitted or not.

MR. BROWNSTEIN: That's right. I withdraw the objection.

Q And if you are guilty of robbery in the first degree, sir, isn't it a fact that you still by law could get up to 60 years? A That's right.

MR. O'CONNOR: Your Honor, at this time I am awaiting further evidence --

THE COURT: Let me have those minutes, please.

(Handed to the Court.)

## REDIRECT EXAMINATION BY MR. BROWNSTEIN:

Q On the question of this plea that you were being interrogated about, that was yesterday? A Yes, sir.

Q A little louder? A Yes, sir.

Q This was in open court, right here before Mr. Justice Gittleson? A Right.

Q And the stenographer was writing the questions

Almeta Gardner - cross

addressing that man whom you recognized, and he said to him, "What is your name?" And he said, "Norman Adderley."?

THE WITNESS: Yes.

THE COURT: Now, what Mr. O'Connor wants to know is whether you remember that took place?

THE WITNESS: Yes.

BY MR. O'CONNOR:

Q You do. A Yes.

Q Do you remember this sequence of events:

"(Second man enters room.)

"What is your name? A" --

THE COURT: Who is being asked this question?

MR. O'CONNOR: This is the second man who entered the room.

THE COURT: This is a question that the District Attorney is asking the second man?

MR. O'CONNOR: Yes.

Q "What is your name? Ulysses Bryant.

"How old are you? 25.

"Where do you live? I live at 300 Halsey Street.

I just moved there.

"(Man leaves the room.)

"MR. CARABETTA: (addressing Mrs. Gardner)



Almeta Gardner - cross

"Q Who is that man? Which one? --

"Q Who is that man? A Which one?

"Q That one that just walked out. Who is he?

A Who is he? I don't know who he is. He looks like one of them, but he had a hat on. He didn't have his hat. If he had his hat on, I could tell.

"Q Who does he look like? A (No reply)."

THE COURT: Gentlemen, you will disregard that question, "Who does he look like? (No reply)." That is not evidence, nor the basis for any question for this purpose.

Q "MR. CARABETTA: (Again, addressing the man who reentered the room:

"Q What is your name? A Ulysses Bryant, sir.

"MR. CARABETTA: (Addressing Mrs. Gardner)

"Q The man has his hat on.

"(Man leaves the room.)

MR. CARABETTA, again addressing Mrs. Gardner:

"A Yes; he is the one with the hat on.

"Q Who is that man? A That's one of the men that came into my house and held me up.

"Q What did he do to you? A He ran around. He was doing the searching. He was tearing up the house. He was looking to see if I had money in the house.



Almeta Gardner - cross

"Q Did he have a weapon? A Yes; he had a gun.

"Q Any one of these? A No. It was another short gun."

Do you remember being asked those questions and giving those answers? A Well --

Q Yes or no? A Yes or no about what?

Q Do you remember being asked those questions and giving those answers, Mr. Gardner? A I told them that I didn't know --

MR. BROWNSTEIN: I object.

MR. O'CONNOR: Oh, no.

MR. BROWNSTEIN: I object, unless she is allowed to answer.

THE WITNESS: I told them in the beginning I didn't know for sure was that the man, but as soon as I seen the right man I told him.

MR. BROWNSTEIN: I take your word for it that you are reading it accurately. You are a member of the Bar. I concede that's transcribed in accordance with the questions and answers that were asked and answered in that precinct.

BY MR. O'CONNOR:

Q Again I direct your attention to a third sequence of events:

Certificate of Service

April 8, 1974

I certify that a copy of this brief and appendix has been mailed to the Attorney General for the State of New York.

Lewis B. Olwin, Jr.

